

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

GOFF DAIRY, LLC,

Plaintiff,

v.

CV 11-0966 CG/WPL

MARK A. HENRY, JR., d/b/a
HENRY FARMS,

Defendant.

ORDER

THIS MATTER comes before the Court on Defendant Mark Henry, Jr.'s letter, received May 30, 2012. (Doc. 11). This case concerns a contract for the sale of hay. Plaintiff operates a dairy business in New Mexico while Defendant operates a farm in Missouri. (Doc. 1 at 1). The complaint alleges that Defendant contracted to sell hay to Plaintiff and subsequently breached the contract. (*Id.* at 2-4). Plaintiff brought suit in this Court under diversity jurisdiction. (*Id.* at 1-2).

Defendant Henry was served with a copy of the summons and complaint on May 7, 2012. (Doc. 10 at 2). Rather than file an answer to the complaint, he sent a letter to the Court stating that he has never sold hay in New Mexico and never shipped hay to New Mexico. (Doc. 11 at 2). He states that all of his contacts with Plaintiff occurred in and around his farm in Missouri. (*Id.*). He therefore claims that this lawsuit has been filed "in the wrong jurisdiction and venue" and asks that the Court dismiss the case so that it might be refiled "in [the] proper venue were [sic] all of the transactions resulted." (*Id.*).

The Court construes Mr. Henry's letter as motion to dismiss for improper venue. A party is entitled to file a motion to dismiss in lieu of an answer since such a motion tolls the

time for an answer to be filed. FED. R. CIV. P. 12(a)(4)(A). This Order shall serve as notice to both parties that the Court has construed the letter as a motion to dismiss. Plaintiff's response, if any, shall be due on or before June 18, 2012, and Defendant's reply, if any, shall be due on or before July 5, 2012.

The Court further notes that Defendant mailed his letter the undersigned judge personally. All further filings in this case should be directed to the Clerk of the Court at United States District Court, District of New Mexico, 100 N. Church Street, Las Cruces, New Mexico, 88011. The Court further orders that the Clerk of the Court mail a copy of the Local Civil Rules and the Guide for *Pro Se* Litigants to Defendant.

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', with a long horizontal line extending to the right.

THE HONORABLE CARMEN E. GARZA
UNITED STATES MAGISTRATE JUDGE